IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 373 of 1992

Hon'ble MR.JUSTICE Y.B.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VORA USUF JUSUB ALI AHMED

Versus

MEMON ADBULGAFUR ABDULSATTAR

Appearance:

MS SEJAL K MANDAVIA for Petitioner
MR VH DESAI for Respondent No. 1-3
RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/11/2002

ORAL JUDGEMENT

1. This is a revision application under section 115 of the Code of Civil Procedure 1908 (as amended in 1976), wherein the applicant is the original defendant no.1 before the trial court. The present opponent nos.1, 2 and 3 as plaintiffs had filed an application Exh.61 in the

suit pending before the trial court viz. Civil Suit No.61/1991. By the said application Exh.61 filed under Order 1, Rule 8, CPC, the plaintiffs sought permission to pursue the suit in a representative capacity. After hearing the parties the trial court allowed the application by order below Exh.61. It is this order which is the subject matter of the present revision.

2. It is both relevant and pertinent to note that the Code of Civil procedure (1908), has been amended by the Code of Civil Procedure (Amendment) Act, 1999, which was published in the Gazette of India dated 30th December 1999. However, by virtue of the Notification issued under section 1, subsection (2) of the said Amendment Act, the amendment came into force from 1st July 2002.

3. For the present purposes, it requires to be noted that section 12 of the Amendment Act amends and modifies section 115 of the principal Act, whereby (inter alia) a new proviso has been substituted as under:

> "Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

It therefore becomes obvious that the High Court while exercising its powers of revision under section 115 of the Code (as amended), would be justified in entertaining such a revision application, and/or interfering with the impugned order, only where the impugned order, if it had been made in favour of the applicant in revision, would have finally disposed of the suit or other proceedings. In other words, a revision under section 115, after the amendment, would be entertainable only if the applicant in revision can successfully contend that if the trial court had granted the application made by the applicant, it would have disposed of the suit or other proceedings (as the case may be).

4. It is also relevant to note that the aforesaid Amending Act of 1999, vide section 32 thereof, deals with repeal and savings.

4.1 By virtue of section 32, subsection (2), clause (i), the amendment introduced by section 12 of the Amending Act shall not affect any proceeding for revision which had been finally disposed of. Obviously,

therefore, the only proceeding which the amendment does not and cannot affect is a revision which has been finally disposed of. In other words, any revision application which is pending admission, or pending final hearing after admission, would be governed by the amendment introduced by section 12 of the Amending Act.

5. On the facts and circumstances of the case, it cannot be said that the application made by the present applicant in revision, had it been granted by the trial court, would have disposed of the suit. Under the circumstances, it must be found that this court cannot "vary or reverse any order made, or any order deciding an issue....".

6. It necessarily follows that the present revision is therefore not maintainable and/or incompetent.

7. This revision is, therefore, dismissed and rule is discharged with no order as to costs. Ad interim relief stands vacated.

****